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Letter dated 29 December 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 24 September 2004 (S/2004/778). The Counter-Terrorism Committee has received the attached fifth report from Malaysia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 December 2005 from the Permanent Representative of Malaysia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to your letter of 29 July 2005, I enclose herewith updates and additional information on measures taken by the Government of Malaysia, as requested by the Counter-Terrorism Committee (see enclosure).

(*Signed*) **Hamidon** Ali
Ambassador
Permanent Representative

Enclosure*

Follow-up response of Malaysia to the report submitted to the Counter-Terrorism Committee

1. Implementation Measures

Effectiveness in the protection of financial systems:

1.1 In Malaysia's fourth report to the Committee, the Committee takes note of the amendments to the Penal Code and the Anti-Money Laundering Act through the adoption of the A1210 and A1208 Acts respectively.

- **The Committee would appreciate receiving a copy of the aforementioned amendments.**

1. A copy each of Acts A1210 and A1208 are attached as **APPENDIX I.**

- **Please provide the Committee with a status report regarding the harmonization of the aforementioned amendments with the Criminal Procedure Code.**

1. The following amendments were enacted in 2003:

1.1 Penal Code (Amendment) Act 2003 – amended the Penal Code to make the commission of terrorist acts, the financing of terrorist acts and hostage-taking specific offences under Malaysian Law. Amendments were also made to extend the grounds on which Malaysia may claim jurisdiction over these offences when committed outside its territory; and

1.2 Anti-Money Laundering (Amendments Act 2003 – amended the Anti-Money Laundering Act 2001 to enable the authorities concerned to trace, freeze, seize and forfeit monies intended to be used for or acquired as a result of terrorist acts regardless whether the sources of those funds is legitimate or the proceeds of other predicate offences. The amendments also enable the Minister to give effect to the Security Council lists to freeze the assets of listed terrorists.

2. Although the Penal Code (Amendment) Act 2003 and the Anti-Money Laundering (Amendment) Act 2003 have become law, they have not been brought into effect yet as the consequential amendments contained in the Criminal Procedure Code

* Attachments are on file with the Secretariat and are available for consultation.

(Amendment) Bill 2004 have not been passed by Parliament. The Bill was referred to a Select Committee of Parliament in May 2004.

3. The Select Committee was expected to complete its work and to report to Parliament in July 2005. However, an extension was sought and granted in July 2005 as the Minister in charge of the Bill had requested the opportunity to incorporate proposals for amendments to the Criminal Procedure Code that had been made in the Report of the Commission to Enhance the Operation and Management of the Royal Malaysian Police (June 2005).

4. The Select Committee is now expected to table its report to Parliament in March 2006. Thereafter the passage of the Criminal Procedure Code (Amendment) Bill 2004 is expected to proceed.

1.2 The Committee would be pleased to receive copies of the evaluations mentioned in the fourth report to the Committee (at page 12).

1. A copy each of the summary of the APG Mutual Evaluation Report on Malaysia and the Executive Summary of the ASEM Training and Technical Assistance Needs Anlysis for Malaysia is attached as **APPENDIX II (A) AND II (B).**

Effectiveness of counter-terrorism measures:

The Committee would be pleased to receive a status report regarding:

1.3 The implementation of legislation addressing conventions and protocols outlined in the fourth report (at pages 14 – 15).

1. International Convention for the Suppression of the Financing of Terrorism

The new Chapter VIA in the Penal Code and the new Chapter VIA and other related amendments to the Anti-Money Laundering Act 2001 to give effect to this Convention have not come into effect yet as consequential amendments to the Criminal Procedure Code are still pending before the Parliament. Accession to the Convention will proceed once these amendments come into effect.

2. International Convention against the Taking of Hostages

The new section 347A in the Penal Code to criminalize the Convention offence has not come into effect yet as consequential amendments to the Criminal Procedure Code are still pending before the Parliament. Accession to the Convention will proceed once these amendments come into effect.

3. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation

Amendments to the Aviation Offences Act 1984 to criminalize the Protocol Offences were completed in August 2005 through the Aviation Offences (Amendment) Act 2005. Malaysia is taking the necessary action to ratify the Protocol.

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Amendments to the Penal Code to criminalize the Convention offences are being drafted, taking into account the proposed amendments to the Convention that are being negotiated under the auspices of the International Maritime Organization. Accession will proceed once the amendments come into effect.

5. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf

Amendments to the Penal Code to criminalize the Protocol offences are being drafted, taking into account the proposed amendments to the Convention that are being negotiated under the auspices of the International Maritime Organization. Accession will proceed once the amendments come into effect.

6. Convention on the Marking of Plastic Explosives for the Purposes of Detection

Amendments to the Explosives Acts 1957 are scheduled to be tabled at the September-December 2005 Parliament Session. Accession will proceed once these amendments come into effect.

7. Convention on the Physical Protection of Nuclear Material

Amendments to the Atomic Energy Licensing Act 1984 are being drafted, taking into consideration the amendments to the Convention in July 2005. Accession will proceed once these amendments come into effect.

- **Malaysia's intentions to become party to the seven remaining conventions and protocols regarding counter-terrorism.**

1. The Malaysian Government has given approval for Malaysia to become party to all remaining conventions and protocols regarding counter-terrorism and the necessary legislative and administrative measures required are being undertaken.

2. Malaysia has also signed the *International Convention on the Suppression of Acts of Nuclear Terrorism* on 16 September 2005. Further legislative and administrative measures will be taken to allow ratification of this Convention

1.4 Have administrative, investigative, prosecutorial and judicial authorities in Malaysia received training regarding the enforcement of laws pertaining to:

- **Typologies and trends on terrorism financing methods and techniques.**

- **Techniques for tracing criminal properties and funds.**

1. A copy of a matrix detailing the training programmes that relate to typologies and trends on terrorism financing as well as techniques for tracing criminal properties and funds is attached as **APPENDIX III.**

1.5 Does Malaysia have a witness protection programme? If the response is in the affirmative, the Committee would be grateful if Malaysia could provide the Committee with relevant details pertaining to the programme. However, if the response is in the negative, please explain what measures are employed to elicit informants in the prevention of terrorism.

1. At present, Malaysia does not have a formal witness protection programme. However, there has been a proposal for Malaysia to

formalize a witness protection programme since 2003 and the Ministry of Internal Security together with the Royal Malaysian Police and the Legal Affairs Division, Prime Minister's Department, has carried out study tours and formulated various proposals. The matter is still under consideration.

2. However the absence of a formal witness protection programme does not mean that there are no facilities for witness protection:

2.1 The Penal Code and the Abduction and Criminal intimidation of Witnesses Act 1947 among others criminalize acts which interfere with witnesses; and

2.2 The Royal Malaysian Police, the Royal Customs Department, the Anti-Corruption Agency and the other law enforcement agencies also have administrative measures in place to deal with the protection of witnesses.

Effectiveness of custom, immigration and border controls:

1.6 Pursuant to sub-paragraphs 3(a) and paragraph 4 of the resolution, please elaborate on the restrictions that the 1988 Customs Order Act places on the import and export of dangerous, hazardous and high risk items, such as firearms, chemicals and weapons.

1. All goods imported and exported from Malaysia must be declared to the Royal Malaysian Customs. Either due to economic, social and security reasons, the Minister can order, under Section 31 (1) of the Customs Act 1967, to prohibit the importation and exportation of such goods subject to a license or in a manner prescribed under the Customs (Prohibition of Imports) Order 1998 and Customs (Prohibition of Exports) Order 1998. The Royal Malaysian Customs is tasked to ensure that the restricted good complies with the provisions of the importation and exportation Orders.

2. In the case of firearms and weapons, the importation and exportation of such goods are subject to a permit issued by the Royal Malaysian Police. The importation or exportation is subject to police scrutiny and the purpose with which the item is intended for.

3. In the case of certain chemicals, the Ministry of Health must issue a license for the importation and exportation of the chemicals.

1.7 The Committee would be grateful if Malaysia would elaborate on the risk assessment technique the Royal Malaysian Customs has developed to inspect all incoming and outgoing goods. Has this technique yielded an increase in the number of successful interceptions of activities that contravene Malaysian laws, especially those pertaining to the prevention of terrorism?

1. The Risk Assessment Technique implemented by the Royal Malaysian Customs is conducted based on selectivity and targeting through the gathering and sharing of information with other law enforcement agencies. This allows for balancing trade facilitation and the enforcement on compliance of the law.

2. This Technique has proven to be successful in preventing the smuggling of goods classified as contraband under Malaysian law such as narcotics, illegal liquor and electrical goods. As of now, there have been no cases of goods related to terrorist activities.

1.8 Malaysia's fourth report to the Committee notes the use of non-intrusive scanning machines by the Royal Malaysian Customs to facilitate the examination of goods at the main ports. Please elaborate on the detection process and explain what further action may be taken.

1. Scanning machines are placed at the entry and exit points of selected ports. The examination techniques are based on selectivity and targeting, whereby the suspected goods (in container) will have to pass though the scanning machine before a physical inspection by Royal Malaysian Customs officers. Any contraband or illegal good detected will be confiscated.

1.9 The Committee would be grateful if Malaysia would provide a status report regarding the initiative to procure radiation detection and monitoring devices, as noted in the fourth report (at page 18). Have these devices been procured? How will they be implemented?

1. Malaysia has not yet procured the radiation detection devices as yet due to budgetary constraints. However, the training of Royal Malaysian Customs and Royal Malaysian Police officers on radiation safety and raising awareness has started with collaboration with the Malaysian Atomic Energy Licensing Board (AELB) and the Malaysian Institute of Nuclear Technology (MINT). The AELB, with the assistance of the IAEA, had initiated a pilot "Training Course in Monitoring, Detecting and Identification of

Nuclear and Radioactive Materials at International Borders" from 27 June to 1 July 2005.

1.10 Has Malaysia implemented the common standards of the World Customs Organisation with regard to electronic reporting and the promotion of supply chain security?

1. Malaysia has implemented the common standards of the WCO electronic reporting. Malaysia has stated its approval for intent to the WCO for the promotion of supply chain security, though implementation is at an initial stage.

1.11 Are Customs and Immigration two separate agencies in Malaysia? To what extent do Immigration and Customs coordinate their activities and share information?

1. The Royal Malaysian Customs and the Department of Immigration are two separate agencies in Malaysia under the purviews of the Ministries of Finance and Home Affairs respectively. Both agencies share information on smuggling and trafficking activities that are detected. These consist of details such the personal information of the smugglers or traffickers such as their names, date of birth and address, as well as other information related to their movement and links with other criminals. Moreover, the Department of Immigration maintains a suspect list of wanted or suspected persons.

2. The Royal Malaysian Customs and the Department of Immigration work very closely with each other, and there are officers from each agency at every point of entry throughout the country. Both agencies coordinate their activities such as when conducting operations and during inspections at points of entry. Anti-Smuggling Preventive Units have been formed for this purpose.

1.12 Does Malaysia utilize an advanced passenger manifest programme to scan inbound passengers' names against terror databases on international flights before they land?

1. Malaysia is in the course of implementing the advance passengers' database which is under the auspices of the Ministry of Home Affairs. The Malaysian government has received proposals on the API systems from Malaysian companies on costs factors in implementing it. Although Malaysia does not have the API system, other mechanisms, such the Suspect Line System operated by the

Immigration Department, are used to scan inbound passengers' names against terror databases on international flights before they land. An individual, whose name triggers the database, will Not be permitted To Land (NTL) in Malaysia.

1.13 The Committee notes the integration of 'smart chip' technology into new Malaysian passports and identity cards. Does Malaysia maintain a database of lost or stolen passports and identity cards? If so, is this information shared with other States on a regular basis?

1. Malaysia stores the record of Malaysian passports issued to any eligible individual on a central database. Any lost or stolen passport reported and the renewal of passports to any individual will be recorded. Therefore any misuse of a passport reported lost or stolen by a third party can be traced by the records maintained by the Immigration Department. Malaysia is a member providing lost and stolen Travel Documents to the ICPO database.

1.14 Does Malaysia permit non-residents to legally change their name? If so, how is positive identification established (e.g. fingerprinting, biometrics, photographs)?

1. Malaysia does not permit non-residents to legally change their names.

Effectiveness of international cooperation in criminal matters

1.15 The Committee would be grateful if Malaysia could elaborate on how many letters rogatory it has sent or received in the past few years. How many such letters have been executed?

1. For the period 2004-2005, Malaysia has sent one letter rogatory which has not been executed and has received two and executed one letters rogatory.

2. Malaysia generally renders mutual legal assistance in criminal matters under:

2.1 the Mutual Assistance in Criminal Mater Act 2002 (MACMA) – all serious offences; or

2.2 Part VII of the Dangerous Drugs (Forfeiture of Property) Act 1988 – drug related matters.

3. The Attorney-General of Malaysia is the Central Authority to make and receive all requests for mutual assistance in criminal matters under the MACMA while the Inspector-General of Police is the designated Central Authority for requests made under the Dangerous Drugs (Forfeiture of Property) Act 1988.

4. Under the MACMA, the legal basis for rendering assistance is a treaty of agreement. In the absence of such treaty, assistance may still be rendered if the relevant Minister issues a Special Direction to allow the MACMA to be used to execute the request for assistance.

5. The MACMA came into force on 1 May 2003. Since that time, Malaysia has made three requests to foreign states and all have been successfully executed. Malaysia has also received 22 requests for mutual legal assistance from foreign states, all being non-treaty partners. Eight requests have been successfully executed under the Special Direction mechanism while action on the remaining 14 is pending. One of these requests, which was was received in the form of a letter rogatory but with the consent of the requesting State, is being executed as a request for mutual legal assistance under the MACMA. No request for mutual legal assistance under the MACMA has been refused to date.

6. The mutual legal assistance in criminal matters mechanism is preferred as it is simpler, faster and more direct than the letters rogatory mechanism. Furthermore, it is available during the investigation stage of a criminal matter unlike letters rogatory.

1.16 Has Malaysia sent or received any requests for extradition? Please state how many requests have been executed or refused and the reasons for these actions.

1. Malaysia requests and renders extradition assistance under the Extradition Act 1992. The Minister of Internal Security is the Central Authority to make and receive all extradition requests under the Extradition Act 1991 unless variation in made under a specific bilateral extradition treaty. In this regard, the Attorney-General of Malaysia is the designated Central Authority under Malaysia's extradition treaties with the United States and Hong Kong S.A.R. However, all requests under these treatises are handled in consultation with the Ministry of Internal Security.

2. Under the Extradition Act 1992, the legal basis for rendering extradition is a treaty of agreement. In the absence of such treaty, extradition may still be granted if the Minister responsible for fugitive criminals (Minister of Internal Security) issues a Special Direction to allow the Extradition Act 1992 to be used to execute the extradition request.

3. In the period 2002 – 2005, Malaysia did not make any extradition requests to any foreign state. During the same period, Malaysia received 12 extradition requests, of which four were from treaty and eight from non-treaty partners. Of these requests, 3 have been complete while 9 are pending.

4. No request for extradition under the Extradition Act 1992 has been refused to date. However, actions on several requests were delayed due to inappropriate forms of requests, or inadequate information in the requests. In such cases, Malaysia has requested that the necessary additional information be provided for rectification be made.

Effectiveness of controls preventing access to weapons by terrorists

1.17 With regard to the Arms Act, the Committee would be grateful if Malaysia would elaborate on what types of firearms may be licensed for possession by individuals, how many pieces of each type may be licensed and whether there are any exceptions to these rules.

1. The types of firearms that may be licensed for possession by individuals are: pistols; revolvers; shotguns; pump guns; rifles; air-guns; air-pistols; or spear guns (harpoon). Details are provided in Section 2 of Arms Act 1960.

2. The number of pieces of each type of firearm that may be licensed to individuals is conducted on case to case basis through guidelines and criteria based on the need and reason of the individual.

3. Exceptions to these rules are permitted for exhibitions (eg: Defense Services Asia Exhibition, Langkawi International Maritime and Aviation Exhibition). See also Section 6 of Arms Act 1960 also provides exemptions from the requirements to hold arms licenses or arms permits. Section 60 allows the Minister power to exempt, particularly for the purpose of exhibition, and exemptions from section 3 (2), section 5 (1) (a) & (b), section 58 of Arms Act 1960.

4. The relevant provisions of the Arms Act 1960 are attached as **APPENDIX IV.**

1.18 Concerning legislation regarding radiological substances in Malaysia, the Committee would be grateful if Malaysia would elaborate on what reporting and auditing procedures have been implemented in order to detect the loss or theft of nuclear and radiological materials. How is radiological material regulated in Malaysia? How is compliance with reporting obligations enforced?

1. The regulation of nuclear material is regulated through the following relevant provisions of the Atomic Energy Licensing Act, 1984:

1.1 Sec. 12 (1) requires a license for all persons who deal in, possess or dispose any radioactive or nuclear materials.

1.2 Sec 20 requires a return to be made by every licensee who has in his possession or under his control any radioactive or nuclear material.

1.3 Section 21 requires a return of every sale of any radioactive or nuclear material to be submitted to the Atomic Energy Licensing Board.

2. Reporting requirements due to theft and loss are detailed in Regulation 53 of the Radiation Protection (Basic Safety Standards) Regulations, 1988, as follows:

2.1 "53 (1) The licensee shall, upon discovering any theft or loss of any radioactive material, nuclear material, prescribed substance or irradiating apparatus in his possession or control –

(a) notify the appropriate authority of such theft or loss within 24 hours;

(b) submit a complete report of the theft or loss to the appropriate authority within 30 days.

2.2 "53 (2) The report to be submitted by the licensee under paragraph (b) of sub-regulation (1) shall contain –

(a) a description of the licensed apparatus, substance or material involved, including its kind, quantity and its chemical and physical forms, wherever appropriate;

(b) a description of the circumstances under which the loss or theft occurred;

(c) a statement of the whereabouts or probable whereabouts of the licensed apparatus, substance or material involved;

(d) the possible radiation exposure to individuals, circumstances under which the exposure could have occurred, and the extent of potential hazard to members of the public;

(e) the actions which have been taken, or will be taken, to recover the licensed apparatus, substance or material;

(f) the procedures or measures which have been or will be adopted to prevent a recurrence of the loss or theft of the licensed apparatus, substance or material; and

(g) any other information which the licensee deems necessary.

3. Methods of enforcement include:

3.1 Record monitoring – the returns of possession and returns of sale are compulsory to be sent to the AELB;

3.2 A database of Ionizing Radiation and Nuclear Energy Activities in Malaysia is continuously updated. This database includes information on the import, export, transit and inventory of radioactive materials, nuclear materials, irradiating apparatus' with locations and the disposal of radioactive materials;

3.3 Approvals are needed for the transfer of location, importing, exporting, transiting and disposal of radioactive or nuclear materials;

3.4 Informed inspections - including inventory checking, and spot checks;

3.5 Inspections, search and seizure upon complaints received; and

3.6 Investigation and prosecution upon non-compliance.

1.19 The Committee would welcome a status report regarding the Mega Ports Initiative. Has the study been completed? If the response is in the affirmative, please elaborate on the findings and recommendations; if the response is in the negative, please inform the Committee when the study is expected to be completed?

1. The Malaysian Cabinet had agreed on 20 April 2005 to the proposal to implement the Mega Ports Initiative. However, in order for the Initiative to be operational, a Memorandum of Understanding (MOU) between Malaysia and the United States needs to be signed. The Royal Malaysia Customs is currently finalizing the MOU with the United States.